

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6398**

**BILL NUMBER:** SB 344

**NOTE PREPARED:** Dec 31, 2010

**BILL AMENDED:**

**SUBJECT:** Elimination of Death Penalty.

**FIRST AUTHOR:** Sen. Randolph

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

- A. It abolishes the death penalty.
- B. It specifies that if a person was sentenced to death and is awaiting execution of the death sentence, the person's death sentence is commuted to a sentence of life imprisonment without parole.
- C. It repeals the law concerning execution of death sentences and makes other conforming amendments.

**Effective Date:** Upon passage.

**Explanation of State Expenditures:** This bill is estimated to increase state General Fund expenditures and reduce expenditures from the Public Defense Fund for the current offender population affected, and it will reduce the cost of legal representation for death penalty defendants in future years. For the current 16 individuals either on death row or facing a death penalty trial, this bill would increase the costs to the state by an estimated \$297,000. For each person who in the future who would otherwise be eligible for the death penalty for being accused of committing a murder under certain conditions, the state would save an estimated \$88,000.

Offenders sentenced to death generally require significantly greater legal representation during the review of their cases at the state and federal level. For the state, abolishing the death penalty will reduce the costs of legal representation and the costs associated with security at the time of execution for these offenders. At the same time, the Department of Correction will incur additional costs associated with housing these offenders and health care costs for decades longer, rather than if they had been executed.

The following table shows the added costs of commuting the death sentences of the 11 offenders on death

row and the offsetting costs of eliminating the death penalty on 5 criminal defendants.

Effect on Current Population, Either on Death Row or Facing a Death Penalty Trial				
Added Costs			notes:	
Offenders on Death Row	Life Without Parole	\$1,122,425		Affects State General Fund – 11 persons currently on death row shown as a net present value discounted over a 44-year period
	Death Penalty	<u>\$384,470</u>	\$737,955	
Defendants Waiting Trial	Avoided Costs*	(\$88,173)		Affects Public Defense Fund – 5 persons are currently awaiting a death penalty trial
	Number of Defendants	<u>5</u>	(\$440,865)	
Difference			\$297,090	
*see table below				

Effect on Future Expenditures – The state would avoid an average expenditure of \$88,000 for the legal defense of each defendant in death penalty cases in future years.

#### Background Information:

Offenders on Death Row – These added costs would all be paid out of the General Fund appropriation to the Department of Correction but would extend over decades. To estimate the difference in costs between execution and lifetime incarceration of these 11 offenders, LSA used the average time that offenders spend on death row before execution at different stages of appeal before execution and how much longer they would stay in prison if they lived to be 75 years of age. In December 2010, 7 death row offenders are at the federal habeas corpus stage, which generally lasts three years before the offender is executed and 4 offenders are at the post conviction relief stage, which generally lasts five years before entering the federal habeas stage. LSA used costs reported by the Department of Correction for food, clothing, and medical care for annual out-of-pocket costs and increased the costs for the medical care as these offenders aged. Since these costs are extended from 3 to 44 years depending on whether the offenders are executed or die in prison when they turn 75, LSA discounted the year-over-year expenditures as a net present value and took the difference between the two computed values.

Defendants Awaiting Trial – The costs for defendants awaiting trial would be paid out of the Public Defense Fund. The Indiana Supreme Court reports that five persons are currently defendants in a death penalty trial. LSA estimated the costs by using the reported out-of-pocket costs of 45 murder trials which occurred between 2000 and 2007 in which the prosecuting attorney requested either the death penalty or life without parole. The State Public Defense Fund would save money by no longer funding death penalty cases. IC 33-40-6-4 specifies that the Public Defense Fund reimburses counties for 50% of the costs of attorneys and certain investigations when a death penalty case is being tried and 40% of the costs when the case is life without parole, the following table shows the estimated state share of costs.

<u>Original Request</u>	<u>State Share of Costs *</u>
Death Penalty	\$129,014
Life Without Parole	\$40,841
Difference in Costs	\$88,173
* Based on the reported out-of-pocket costs of 45 murder trials when the prosecuting attorney requested the death penalty or life without parole.	

The Public Defense Fund receives semi-annual transfers of \$2.7 M from the state General Fund.

### **Explanation of State Revenues:**

**Explanation of Local Expenditures:** Depending on how far the death penalty cases against the five defendants awaiting trial have progressed, counties would avoid the costs of jury trials, some attorneys fees, and the costs of appeals. In future years, counties would save an estimated \$127,000 for each person for whom the death penalty was not requested.

The following table compares the average out-of-pocket costs for counties in 26 death penalty cases and 19 cases where the prosecuting attorney requested life without parole.

<b>Average Cost Components for Murder Trials Based on 45 Murder Cases Between 2000 and 2007 Where the Prosecuting Attorney Requested Either the Death Penalty or Life Without Parole</b>							
<b>Original Request</b>	<b>Number of Cases</b>	<b>Jury Trials</b>	<b>Attorney Costs</b>	<b>Expert Witnesses</b>	<b>Other Costs</b>	<b>Costs of Appeals</b>	<b>Total Average Costs</b>
Death Penalty	26	\$4,885	\$90,754	\$38,260	\$0	\$95,870	\$229,769
Life Without Parole	19	\$3,525	\$10,560	\$51,066	\$1,866	\$35,280	\$102,297

### **Explanation of Local Revenues:**

**State Agencies Affected:** Department of Correction; State Public Defender; Office of the Attorney General; Public Defender Commission; Division of State Court Administration, Indiana Supreme Court.

**Local Agencies Affected:** Trial courts; prosecuting attorneys; county sheriffs; local law enforcement agencies.

**Information Sources:** Department of Correction; Public Defense Fund, LSA survey of counties.

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